IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 18 of 2007

DATE OF DECISION: 7.9.2007

M/s Shiv Shakti Steel Tubes

…Appellant

Versus

Commissioner of Central Excise, Ludhiana

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Ashok Aggarwal, Senior Advocate, with
Mr. Rajesh Garg, Advocate,
for the assessee-appellant.

M.M. KUMAR, J.

The pristine question raised in this appeal is whether statements made under Section 14 of the Central Excise Act, 1944 are admissible in evidence to sustain penalty under the Central Excise Rules, 1944. The assessee has filed the instant appeal under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), challenging order dated 17.5.2006, passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'), in Appeal No. Excise/1053/2004, upholding the order-in-original dated 10.12.2003, passed by the Commissioner of Central Excise, Ludhiana, whereby invoking proviso to Section 11A(1) of the Act, demand of duty of Rs. 59,79,963/- (Rs. 54,99,963/- + Rs. 4,80,000/-) has been raised. The assessee-appellant has also been held liable for penal action for

violations of Rule 9(1), 52A, 173F, 173C, 53 read with Rule 173G of the Central Excise Rules, 1944 (for brevity, 'the Rules'). Accordingly, a penalty of Rs. 59,79,963/- has been imposed under Rule 173Q of the Rules read with Section 11AC of the Act. Further the assessee-appellant has been ordered to pay interest on the duty demanded, under the provisions of Section 11AB of the Act.

The assessee-appellant has claimed that the following substantial questions of law would arise for determination of this Court:-

i) Whether any demand or penalty could be levied against the appellant in the absence of any evidence except the so-called diary maintained by an employee or the confessional statement of the proprietor of the recipient firm?

ii) Whether in the facts and circumstances of the case an opportunity to cross-examine the witnesses was required to be given to the appellant?

iii) Whether the so-called recovery from one Shri Ram Kumar is admissible piece of evidence in view of law laid down by Hon'ble the Supreme Court in the case of CBI v. V.C. Shukla [(1998) 3 SCC 410]?

iv) Whether the statements recorded of Shivji Ram, proprietor during the course of search, which later stood withdrawn was of any value as the same was under duress?

v) Whether the aforesaid statement of Shivji Ram was admissible piece of evidence?

vi) Whether any demand/penalty could be levied on the appellant in the absence of any opportunity of cross-examination having been granted with regard to the witnesses relied upon by the department?

Facts of the case may first be noticed. The assessee firm is having their manufacturing unit at Sangrur Road, Dirba, District Sangrur and registered with the Central Excise Department for manufacture of 'ERW Pipes' falling under Chapter 73 of the First Schedule of the Act.

On 1.11.1999, intelligence officers of the department conducted search of the premises of (i) Shiv Shakti Tubes, Sangrur Road, Dirba; (ii) Bhiwani Tubes (P) Ltd., (BTPL) Sangrur Road, Dirba; (iii) Jagdamba Steel Traders (JST), Z-4 Loha Mandi – Naraina New Delhi, (iv) Jagdama Steel Traders (JST), Plot No. 13 Gali No. 1, Mundka, Delhi; and (v) Jagdamba Steel Traders (JST), E-49, Naraina, New Delhi. During search operations certain records/documents were seized and statements of persons were also recorded under Section 14 of the Act. At the time of search carbon copies of certain note/slip pads were recovered indicating the details of receipt and dispatch of goods in the Mundka godown of Jagdama Steel Traders. Details such as date of receipt/dispatch, name of party from whom received and to whom dispatched, truck No., size/dimension of the goods, No. of bundles and weight etc. were mentioned therein. Consignment wise entries relating to dispatch/receipt were made which bears the signature of the Godown Incharge Shri Ram Kumar. Shri Ram Kumar disclosed that the original copies of the aforementioned note/slip pads were sent to Shri Shivji Ram, Proprietor of the firm Jagdama Steel Traders. Other than this, weighment slips indicating weighment of goods at Shiv Shanker Dharam Kanta were also recovered, particulars of which tallied with the particulars mentioned in the aforementioned note/slip pads.

He conceded that the pipes are received from the appellant's factory at Dirba. He also named the owner of the assessee-appellant's factory Shivji Ram stating that he was paying him salary @ Rs.2,000/- per month for looking after the godown. The goods have come from Dirba in trucks which are owned by Shivji Ram.

On unloading the goods, a record use to be maintained in the form of slip in duplicate mentioning the date and the weight of the goods. One of the copies always use to be sent to the owner Shivji Ram. This witness conceded that whatever the goods were received at the godown from the factory, they are not accompanied by any excise invoice and also admitted that the godown was searched in the presence of independent witnesses. The officers had taken some documents in their custody. A panchnama was prepared and entrusted to him. He has also stated that the statement was made by him voluntarily and without any pressure.

On 1.11.1999, statement of Shri Shivji Ram, Proprietor of M/s Jagdama Steel Traders was also recorded under Section 14 of the Act, who also made certain admissions. Relevant extract of the statement of Shri Shivji Ram reads as under:-

> "…….I have been explained the provision of the said section fourteen and I have understood the same. I have to give true and correct statement and my statement can be used against me or any other person in any court of law.
>
> I am partner of M/s Shiv Shakti Steel Tubes Dirba, Punjab, which is engaged in manufacturing of ERW/Blank pipe/furniture pipe. The other partners are as under:
>
> 1) Radhe Sharma
> 2) Hem Raj
> 3) Deepak Kumar
>
> I am also one of the director of M/s Bhiwani Tubes (P) Limited Dirba (Punjab), which is also engaged in manufacturing of ERW/Blank furniture pipes. The other Director of Bhiwani Tubes (P) Limited as under:
>
> 1) Hem Raj

I am also the proprietor of Jagdamba Steels Traders, 2-4, Loha Market, Narayana which is engaged in the trading of blank pipe manufacturing by the units as under:

1. Shiv Shakti Steel Tube
2. Bushan Tube (P) Limited
3. Nabha Pipes (P) Limited, Nabha (Punjab)
4. SE pipes, Samana (Punjab)
5. From local market scrap and pipe from many parties.

I am looking after the financial activity such as Banks, Recovery of debts and all the works at Delhi in respect of Shiv Shakti Steel Tubes and Bhiwani Tools (P) Limited. We have got following truck in the name manufacturing units:

xxx xxx xxx xxx xxx

xxx xxx xxx xxx

We are selling the black pipes to Jagdamba Steel Traders at a price more than Rs. 500/- including approx. P.MT over amount above of the invoice price of Bhiwani Tubes (P) Limited and Shiv Shakti Tube Traders M/s Jagdamba Steel is functioning from the last two years. Apart of the black pipe purchased from Bhiwani Tubes (P) Limited and Shiv Shakti Steel Tube are received without any invoice, it may be 10 to 15% of the total purchase. The payment is made in cash which is obtained from the sale of these pipe by Jagdamba Steels Tubes.

All the goods are reached at Delhi only through Company trucks. We have got a godown at Mudian in which the pipes received from Bhiwani Tubes P Limited and Shiv Shakti Steel Tubes and other from which Jagdamba Steel Traders purchased the pipes. The pipes stored at our

Mudian godown and received and record relating to the factory. The Mudica godown has been started few months before. The pipes received without bill and also stored there. Sh. Ram Kumar is looking after the work of the factory done for loading and unloading. Not legible is functioning at 2-4 Loha Mandi Nariana which is looking after by me.

All the pipes received without bill from Shiv Shakti and Biwani Tubes (P) Limited received on Kacha slip and which is destroyed after the received (receipt?) of the pipes from the above factories/in general. We are showing that receipt of 9 to 10 black pipes, whereas the actual receipt is 2000 fourteen to fifteen Mt. The bill from the factories are received for 9 to 10 matric tonnes and the remaining quantity are being received without any invoice/bill A/c the No. 2 (unaccounted) sale proceed are kept in bank account No. 15463 at State Bank of Patiala, Model Basti, Karol Bagh, which is in the name of Balvir one of my employee A/c. The unacted slips are destroyed. The genuine turn over is about 1 to 1 ½ crores. Our company received two/three bill per day from the factory.

The unaccounted sale proceeds are utilized in the purchase of strips iron in the manufacturing of black pipe. The strips are purchased from M/s Gopal Steel Rolling Mills, Patiala Steel Rolling Mills and others. All are located at Mandi Gobindgarh (Punjab).

xxx xxx xxx xxx xxx

xxx xxx xxx xxx

I undertake to pay the duty evaded by our M/s Bhiwani Tubes (P) Limited and M/s Shiv Shakti Steel Tubes.

The above statement has been tendered vide without any pressure, threat and coercion. It is true and correct."

On 15.11.1999, another statement of Shri Shivji Ram was recorded wherein he stated that he was not having any knowledge of records resumed from their godown and also denied that Shri Ram Kumar, who signed the panchnama, was their employee. He only used to supervise the labour work of his godown. Shri Shivji Ram further claimed that goods used to be received in the godown only under the cover of proper bills and he could not say anything about the slips which were not accounted by the bills though he admitted the fact that these indicate "goods received from Shiv Shakti" on the plea that the slips were not in his own handwriting and the said pads did not belong to him. Further statements of Shri Shivji Ram were also recorded on 13.4.2000 and 23.3.2000, wherein he stated that no account of day to day income from their Tempo No. HR-3196, which was used for supplying the goods from Mundka godown, was maintained by him. He showed his ignorance about the entries in the computer print of Shiv Shanker Dharam Kanta.

After scrutiny of record, various statements, issuance of show cause notice dated 21.6.2001, considering the reply dated 4.5.2003 and after affording opportunity of personal hearing, the Commissioner of Central Excise, Ludhiana, vide order-in-original, dated 10.12.2003, confirmed the demand of duty of Rs. 59,79,963/-, imposed penalty of Rs. 59,79,963 as well as interest under Section 11AB of the Act on the duty demanded.

The assessee-appellant then filed an appeal before the Tribunal, which has been dismissed vide order dated 17.5.2006. The findings recorded by the Tribunal are discernible from para 6 of the order, which reads as under:-

"6. We find that appellant's main argument is that Shri Ram Kumar In charge of the goodown of Jagdamba Steel

Traders was not produced for cross-examination. The Adjudication authority issued summons but he was not available at the given address. The documentary evidence i.e. Note Book which were recovered from the premises of Jagdamba Steel Traders shows that the receipt of the goods from the appellant which was duly entered in with details such as weight, size, supplier and the truck number mentioned in the Diary is also belongs to the appellant. The disclosure made by Shri Ram Kumar is further collaborated by the statement of Shri Shivji Ram who is the partner in appellant Firm and the proprietor of Jagdamba Steel Traders where he disclosed certain facts which were in his personal knowledge i.e. Bank account opened in the name of his employee Balbir. Balbir is getting only Rs. 2000/- per month and the deposits made at the time of opening of the Bank account, is more than 4 lakhs. We have gone through the retraction, which is only to the extent he was forced to write the statement. Shri Shivji Ram is a B.Com. and it cannot alleged that he is an illiterate man and succumbed to pressure of Revenue. He is a partner in manufacturing Unit and in the statement he disclosed certain facts, which were only in his knowledge. The disclosure made by Shivji Ram is further collaborated by Balbir his employee in whose name account is opened. It is also come on record that goods received at Jagdamba Steel Traders was being weighed at one Dharam Kanta and payment is being made by Shiv Shakti Tubes, the present appellant. It is also come on record that the goods were cleared by Jagdamba Steel Traders without any documents. Appellant relied upon the decision of the Tribunal in the case

of Jagatpal Prem Chand Ltd. Vs. Commissioner of Central Excise, Delhi-I (Supra). We find that the facts of the case are different as in that case the statement of un-related person was relied upon for confirming the demand. In the present case Shivji Ram is a partner in manufacturing Unit and proprietor of Jagdamba Steel Traders from whose premises the documents were recovered, showing the clearance of the goods. In these circumstances, we find no merit in the contention of the appellant. The appeal is dismissed."

Shri Ashok Aggarwal, learned senior counsel, without disputing the facts of the case, made twofold submissions. Firstly, he argued that no opportunity was ever granted to the assessee-appellant to cross-examine the persons whose statements have been heavily relied upon by the department and, therefore, such statements were liable to be discarded. In that regard reliance has been placed on a judgment of Hon'ble the Supreme Court in the case of **C. Vasantlal & Co. v. CIT, (1962) 45 ITR 206**. The second argument advanced by the learned counsel is that once Shri Shivji Ram, proprietor of Jagdamba Steel Traders, retracted from his first statement dated 1.11.1999 and specifically denied knowledge of the records resumed from the Mundka Godown then the Commissioner of Central Excise as well as the Tribunal could not have placed reliance upon the first statement of Shri Shivji Ram. In that regard reliance has been placed on the judgments of Hon'ble the Supreme Court in the cases of **Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752** and **CBI v. V.C. Shukla, (1998) 3 SCC 410**. Learned counsel has also referred to a Division Bench judgment of this Court in the case of **Sunil Gupta v. Union of India, 1999 (2) PLR 424** .

After hearing learned counsel, perusing the record as well as the statements of Ram Kumar and Shivji Ram, we are of the view that this

appeal is devoid of merit and is thus liable to be dismissed. It has been found as a fact that Shivji Ram is also the owner of Shiv Shakti Steel Tubes as well as proprietor of M/s Jagdamba Steel Traders. The aforementioned fact has been admitted by Shivji Ram in his statement recorded under Section 14 of the Act. It is well settled that a statement made by a witness or a party under Section 14 is *ex facie* admissible in evidence as has been laid down by Hon'ble the Supreme Court in the case of **Assistant Collector of Central Excise, Rajamundry** Vs. **Duncan Agro Industries Ltd.** (2000) 7 SCC 53. In that case, the Supreme Court was considering the question as to whether it was necessary to comply with the precautions envisaged by Section 164 of the Code of Criminal Procedure, 1973 when a Custom Officer record a statement under Section 108 of the Customs Act. In para 9 of the judgment, it has been noticed that Section 14 of the Act is practically the same as Section 108 of the Customs Act and, therefore, it has been observed that the decision rendered by the Supreme Court under the other corresponding provisions will be of much advantage to understand the scope of the provisions. After referring to the provisions of Section 164 of the Code of Criminal Procedure and the judgment of the Supreme Court in **Haroom Haji Abdulla** Vs. **State of Maharashtra** AIR 1968 SC 832, their Lordships observed as under:

> *"We hold that a statement recorded by Customs Officers under Section 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act. Such an exercise can be made only after the appeal is regularised by granting leave to appeal. Since leave was declined on a wrong interpretation of law we have to interfere with the impugned order."*

It is thus evident that a statement made by a witness under Section 14 can be used against its makers as long as it is not hit by any of

the defects envisaged by Section 24 of the Evidence Act, 1872. Accordingly, it is required to be examined as to whether such a statement has been procured by any inducement, threat or promise having reference to the charge against the accused person. There is nothing on the record to suggest that the statements made by Ram Kumar and Shivji Ram is afflicted by any such malady as envisaged by Section 24 of the Evidence Act, 1872.

We are further of the opinion that the statements made under Section 14 are in the nature of admission and ordinarily may not fall within the meaning of expression 'confession'. It is equally well settled that if admission is divided in two parts 'inculpatory' and 'exculpatory' then inculpatory part of the statement can be acted upon and relied if it is corroborated by other evidence in material particulars. In that regard, reliance may be placed on a judgment of the Supreme Court in the case of **Palvinder Kaur** V. **State of Punjab** AIR 1952 SC 354. According to the view expressed by Hon'ble the Supreme Court, a confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even of a conclusively incriminating fact cannot by itself be regarded as confession and a statement that contains self exculpatory matter cannot amount to a confession because if exculpatory statement is of some fact which if true then it would negative the offence alleged to be confessed. Accordingly, if a statement recorded under Section 24 of the Evidence Act have portions of admission, which are corroborated by independent witnesses and other material then it may constitute basis for recording a firm finding with regard to penalty. Therefore, we do not find any legal infirmity in the view taken by the Tribunal specifically when various portions of admission are amply corroborated by statements of other witnesses and documents.

The arguments of the learned counsel based on the judgment of the Supreme Court in **VS Shukla's case (supra)** has failed to impress us because in that the entries on the loose sheets of paper as against regularly maintained books of accounts were discarded on the grounds that those entries did not answer the requirements of Section 34 of the Evidence Act, 1872. It is thus obvious that the aforementioned judgment has no bearing on the question raised in the instant appeal. The Division Bench judgment in the case of **Sunil Gupta (supra)** would also not advance the case of the appellant inasmuch as the Division Bench of this Court has considered entirely a different question namely 'whether a Central Excise Officer is debarred from arresting a person without a warrant despite the fact that he has reasons to believe that such a person is liable to be punished under the Central Excise Act, 1944'. Likewise, the judgment of the Supreme Court in **C. Vasantlal and Company (supra)** cannot also come to rescue of the appellant because in the present case Sh. Shivji Ram, who had made the admission could not himself claim that he should be subjected to his own cross-examination. Moreover, he has already made an attempt to resile from the statement made under Section 14 of the Act. In our view, question of cross-examination of both the witnesses would not arise because such an application could not have been moved by Shivji Ram himself being the part of either Jagdamba Steel Traders or proprietor of M/s Shiv Shakti Steel Tubes-the assessee/appellant. There is thus no merit in the contention raised on behalf of the appellant.

For the reasons aforementioned, this appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 7, 2007
Pkapoor/ jt